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MORTGAGE ASSOCIATION

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA- SAN JOSE DIVISION**

FEDERAL NATIONAL MORTGAGE  
ASSOCIATION

vs.

OFELIA AREGUIN, et al.

Case No.: 5:14-cv-03248  
Assigned for all Purposes to: Hon.  
Lucy Koh

**PLAINTIFF'S NOTICE OF MOTION  
AND MOTION FOR REMAND**

[FILED CONCURRENTLY WITH DECLARATION OF  
KAYO MANSON-TOMPKINS IN SUPPORT OF  
PLAINTIFF MOTION FOR REMAND; [PROPOSED]  
ORDER; CERTIFICATE OF SERVICE]

DATE: December 18, 2014  
TIME: 1:30 p.m.  
COURTROOM: 8

YOU ARE HEREBY NOTIFIED THAT ON December 18, 2014 at 1:30  
p.m., in Courtroom 8 of the United States District Court, Northern District of  
California located at 280 South 1st Street, CA 95113, Plaintiff FEDERAL  
NATIONAL MORTGAGE ASSOCIATION ("Plaintiff"), will move this Court for

1 an Order remanding this California State Court unlawful detainer action back  
2 to the Monterey County Superior Court and awarding sanctions against  
3 Defendant MARIA ELENA COHARA.  
4

5 This Motion is based on this Notice, the Declaration of Kayo Manson-  
6 Tompkins, the Memorandum of Points and Authorities served herewith, the  
7 records and files in United States District Court Case No. 5:14-cv-03248 and  
8 such other and further evidence and authority as may later be submitted in  
9 support of this Motion.  
10

11  
12 The Motion for Remand is based on the following grounds:

13 1. Defendant Maria Elena Cohara (“Defendant Cohara”) has filed this  
14 Notice of Removal based on a claim that this Court has jurisdiction  
15 pursuant to United States Code, Title 28, sections 1332, 1441(a), and  
16 1446.  
17

18 2. Defendant Cohara alleges, in error, that this Court has jurisdiction  
19 over this matter based on “Complete Diversity of Citizenship.”  
20

21 3. California Law governs this Unlawful Detainer Action;  
22

23 4. Defendant Cohara is a resident of the County of Monterey, State of  
24 California and will not suffer prejudice if the Superior Court in Monterey  
25 County decides the issues presented in the Unlawful Detainer Action;  
26

27 5. The Unlawful Action concerns a parcel of real property (the  
28 “Property”) located in the County of Monterey, State of California with a

1 common address of 348 Chardonnay Drive, Salinas, CA 93906 ("subject  
2 property"). The Superior Court in Monterey County is the proper jurisdiction  
3 to determine the limited issues presented by the Unlawful Detainer Action  
4 as to which Defendant Cohara has sought removal; and  
5

6 6. Defendant has the burden of proof in opposing this Motion;  
7

8 7. The Request for an Award of Attorneys Fees, Costs and Sanctions is  
9 based on the following grounds:

10 a. The foreclosure sale occurred on December 23, 2013;  
11

12 b. Since the foreclosure sale, Defendant Cohara has resided in  
13 the Property for more than eight (8) months, without making  
14 any mortgage or rent payments to Plaintiff;  
15

16 c. On February 20, 2014, Plaintiff filed its Verified Complaint for  
17 Unlawful Detainer, naming former owner Maria Ochoa a.k.a.  
18 Maria Elena Cohara. (Monterey County Superior Court, Case  
19 No. M126758.)  
20

21 d. In March 2014, alleged tenant Ofelia Areguin contacted  
22 Plaintiff's counsel and claimed that she was the **sole** occupant  
23 of the subject property.  
24

25 e. On March 25, 2014, Plaintiff dismissed Monterey County  
26 Superior Court, Case No. M126758 without prejudice.  
27  
28

- 1 f. On May 29, 2014, Plaintiff filed its Verified Complaint for  
2 Unlawful Detainer. (Monterey County Superior Court, Case  
3 No. M127983.)  
4
- 5 g. On June 3, 2014, Plaintiff served the Summons and Complaint  
6 in Case No. M127983.  
7
- 8 h. On June 10, 2014, Defendant Maria Elena Cohara (a.k.a.  
9 former owner Maria Ochoa) filed a Prejudgment Claim of Right  
10 of Possession in Case No. M127983.  
11
- 12 i. On the same day, Defendant Maria Elena Cohara (a.k.a.  
13 former owner Maria Ochoa) filed a demurrer to Plaintiff's  
14 Complaint, which was overruled.  
15
- 16 j. On July 10, 2014, Defendant Maria Elena Cohara filed her  
17 Answer in the Unlawful Detainer Action (Case No. M127983).  
18
- 19 k. On July 11, 2014, Defendant Maria Elena Cohara filed another  
20 copy of the same Answer in the Unlawful Detainer Action  
21 (Case No. M127983).  
22
- 23 l. On July 18, 2014, Defendant Maria Elena Cohara filed a Notice  
24 of Removal to Federal Court under 28 U.S.C. sections 1332,  
25 1441(a), and 1446 in order to further delay the eviction  
26 process. (United States District Court, Northern District, Case  
27 No. Case No.: 5:14-cv-03248.)  
28

1 m. On July 18, 2014, the Federal Court issued a recommendation  
2 that this matter be remanded back to the Superior Court  
3 because: (1) Defendant Cohara is a resident of the State of  
4 California, thereby defeating diversity jurisdiction, and (2) no  
5 federal question is raised on the face of Plaintiff's Complaint.  
6  
7 (See Court's Docket, item no. 4.)  
8

9 n. To date, no order has been issued by this Court remanding this  
10 matter back to the Superior Court. Therefore, this Motion for  
11 Remand follows.  
12

13 o. Defendant's removal of this unlawful detainer action is a bad  
14 faith maneuver and abuse of this Court's processes in an  
15 attempt to continue her free ride in possession of the Property.  
16 Defendant is attempting to stall a lawful eviction action as to  
17 which she has no defense. Thus, it is respectfully submitted  
18 that sanctions should be imposed under Rule 11.  
19  
20

21 Dated: September 11, 2014

THE WOLF FIRM

22  
23  
24 By /s/ Kayo Manson-Tompkins  
25 Kayo Manson-Tompkins  
26 Attorneys for Plaintiff,  
27 FEDERAL NATIONAL MORTGAGE  
28 ASSOCIATION

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

Plaintiff FEDERAL NATIONAL MORTGAGE ASSOCIATION ("Plaintiff"), owner of the real property commonly described as 348 Chardonnay Drive, Salinas, CA 93906 (the "Property") files the following Memorandum of Points and Authorities in Support of its Application to Remand this action back to the Superior Court and its Request for an Award of Sanctions.

### **II. STATEMENT OF FACTS**

Plaintiff is the purchaser of the real property located at 348 Chardonnay Drive, Salinas, CA 93906 at a trustee's sale, sold in accordance with California Civil Code Section 2924. Plaintiff's title under the trustee's sale has been duly perfected. (Declaration of Kayo Manson-Tompkins ("Manson-Tompkins Decl."), ¶3; see Exhibit "1" to Plaintiff's Complaint for Unlawful Detainer (See Docket, item no. 1, Attachment No. 1.) ) Defendant Maria Elena Cohara is the former owner of the subject property, who lost the Property at a foreclosure sale on December 23, 2013 due to her failure to make her mortgage payments. (Manson-Tompkins Decl., ¶4.)

On February 13, 2014, after title was duly perfect, Plaintiff served its Notice to Quit on Defendants Maria Ochoa (a.k.a. Maria Elena Cohara) and

1 all Unknown Occupants. (Manson-Tompkins Decl., ¶5; see Notice to Quit,  
2 which is attached as Exhibit “2” to Plaintiff’s Complaint for Unlawful Detainer  
3 (See Docket, item no. 1, Attachment No. 1).)

4  
5 On February 20, 2014, Plaintiff filed its Complaint for Unlawful  
6 Detainer, naming Defendant Maria Ochoa (a.k.a. Maria Elena Cohara), and  
7 Does 1 through 10. (Monterey County Superior Court, Case No. M126758.)  
8 In March 2014, Plaintiff learned that the subject property is occupied by  
9 tenant Ofelia Areguin, not the former owner. (Manson-Tompkins Decl., ¶6.)  
10 On March 25, 2014, Plaintiff dismissed Case No. M126758 without  
11 prejudice. (Manson-Tompkins Decl., ¶7.)

12  
13 On May 29, 2014, Plaintiff filed its Complaint for Unlawful Detainer,  
14 naming Defendant Ofelia Areguin and Does 1 through 10. (Monterey County  
15 Superior Court, Case No. M127983.) (Manson-Tompkins Decl., ¶8.) On  
16 June 10, 2014, Defendant Maria Elena Cohara (a.k.a. former owner Maria  
17 Ochoa) filed a Prejudgment Claim of Right of Possession in Case No.  
18 M127983. (Manson-Tompkins Decl., ¶9) On the same day, Defendant  
19 Maria Elena Cohara (a.k.a. former owner Maria Ochoa) filed her Demurrer in  
20 response to Plaintiff’s Complaint. (Manson-Tompkins Decl., ¶10) The  
21 Demurrer of Defendant Maria Elena Cohara (a.k.a. former owner Maria  
22 Ochoa) was heard on July 7, 2014. (Manson-Tompkins Decl., ¶11) The  
23 Court denied Defendant’s Demurrer and ordered her to file an answer within  
24  
25  
26  
27  
28

1 five (5) days. (Manson-Tompkins Decl., ¶12.)

2       On July 10, 2014 and July 11, 2014, Defendant Maria Elena Cohara  
3  
4 filed two separate and identical Answers to Plaintiff's Complaint for Unlawful  
5 Detainer. (Manson-Tompkins Decl., ¶13; see Docket, item no. 1;  
6 Attachment No. 2.) On July 18, 2014, Defendant Maria Elena Cohara filed  
7  
8 her Notice of Removal of the Unlawful Detainer action to the federal court.  
9 (Manson-Tompkins Decl., ¶14; See Docket, item no. 1.) On July 18, 2014,  
10 Judge Paul S. Grewal ordered that this case be reassigned to another  
11  
12 judge. (Manson-Tompkins Decl., ¶15; see Docket, item no. 4.) Judge  
13 Grewal also issued a recommendation that this case be remanded to the  
14  
15 state court for lack of subject matter jurisdiction. (Manson-Tompkins Decl.,  
16 ¶16; see Docket, item no. 4.) To date, this matter has not been remanded  
17  
18 back to the Superior Court. (Manson-Tompkins Decl., ¶17.) As discussed  
19  
20 in greater detail below, removing this unlawful detainer action to the federal  
21  
22 court is yet another delay tactic by Defendant in postpone this eviction.

23 ///

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28 ///



1 **III. ARGUMENT**

2 **A. This Unlawful Detainer Action Should Be Remanded Back to**  
3 **the Monterey County Superior Court.**  
4

5 **1. Defendant Maria Elena Cohara Has The Burden of Proof**  
6 **In Opposing This Application.**  
7

8 As the party seeking removal, the burden is on Defendant Cohara to  
9 establish that grounds exist for the removal. (See *Lockyer v. Dynegy* (9th  
10 Cir. 2004) 375 F3d 831, 838.) There is a strong presumption against  
11 removal jurisdiction and removal should be rejected “if there is any doubt  
12 as to the right to removal in the first instance.” (*Gaus v. Miles, Inc.* (9th  
13 Cir.1992) 980 F2d 564, 566.)  
14  
15

16 Here, as discussed in greater detail below, Defendant has failed to  
17 meet her burden. It is respectfully submitted that removal should be  
18 rejected in this matter and this matter should be remanded back to the  
19 Superior Court of Monterey County.  
20

21 **2. Defendant Cohara is Citizen of the State Where Plaintiff**  
22 **filed the Unlawful Detainer Action and May Not Remove**  
23 **this Case to Federal Court Based on Diversity of**  
24 **Citizenship.**  
25

26 Pursuant to 28 USC section 1441, a civil action that is otherwise  
27 removable based on diversity jurisdiction under section 1332 “may not be  
28

1 removed if any of the parties in interest properly joined and served as  
2 defendants is a citizen of the State in which such action is brought.” (28  
3 USC § 1441(b)(2).)

4  
5 Here, Defendant is a citizen of the State of California and resident of  
6 the County of Monterey. Plaintiff’s Complaint for Unlawful Detainer was  
7 filed in the Monterey County Superior Court, State of California. Therefore,  
8 Defendant is a citizen of the State in which the action was brought and  
9 may not remove this case to federal court.  
10

11  
12 Courts have held that removal based on diversity jurisdiction is  
13 intended to protect out-of-state defendants from possible prejudices in  
14 state court. (*Lively v. Wild Oats Mkts., Inc.* (9th Cir. Cal. 2006) 456 F.3d  
15 933, 940; *Skranak v. Castenada* (9th Cir. 2005) 425 F.3d 1213.) The  
16 purpose of diversity jurisdiction is to provide a federal forum for out-of-state  
17 litigants where they are free from prejudice in favor of a local litigant. The  
18 need for such protection is absent, however, in cases where the defendant  
19 is a citizen of the state in which the case is brought. (*See Skranak v.*  
20 *Castenada* (9th Cir. 2005) 425 F.3d 1213, 1216 (holding that jurisdictional  
21 bars cannot be waived by the parties and may be addressed sua sponte).  
22

23  
24 Here, Defendant Maria Elena Cohara is a citizen of the State of  
25 California, where the Unlawful Detainer action was originally filed.  
26 Moreover, Defendant is a resident of the County where the Superior Court  
27  
28

1 action was filed. Thus, there is ***no possible prejudice*** to Defendant,  
2 which is the critical requirement for diversity jurisdiction. As such, this  
3 Court should remand this matter back to the Monterey County Superior  
4 Court.  
5

6 **II. AN AWARD OF SANCTIONS IS APPROPRIATE AND NECESSARY**  
7 **IN THIS ACTION**  
8

9 Courts have held that the filing of a removal for purposes of delay  
10 and without proper foundation is improper and not only sanctionable under  
11 Rule 11 but possibly unethical. (See *Ruhrgas AG v. Marathon Oil Co*  
12 (1999) 526 US 574, 588 ; *McKinney v. Board of Trustee of Maryland*  
13 *Comm. College* (1992) 955 F 2d 924, 928; *Standridge v. Wal-Mart Stores,*  
14 *Inc.* (ND GA 1996) 945 F Supp 252, 254.)  
15  
16

17 In the instant matter, Defendant Cohara filed a frivolous notice of  
18 removal. Defendant's attempt to remove this unlawful detainer action to  
19 federal court is nothing more than another bad faith maneuver and abuse  
20 of Court processes to continue to have a free ride in her possession of the  
21 Property and stall a lawful eviction action.  
22  
23

24 It is respectfully submitted that this Court put an end to this flagrant  
25 abuse of the Court processes by imposing sanctions against Defendant.  
26

27 ///

28 ///

1 **III. CONCLUSION**

2 Based upon the foregoing argument and authority, it is respectfully  
3 requested that this Motion be granted as prayed, the Unlawful Detainer  
4 Action be remanded back to Superior Court, and that the sanctions be  
5 awarded to Plaintiff.  
6

7  
8 Dated: September 11, 2014

THE WOLF FIRM

9  
10 By /s/ Kayo Manson-Tompkins  
11 Kayo Manson-Tompkins  
12 Attorneys for Plaintiff,  
13 FEDERAL NATIONAL MORTGAGE  
14 ASSOCIATION  
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